

Restatement (Third) of Agency

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Chapter 4. Ratification

§ 4.01 Ratification Defined

- (1) Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority.
- (2) A person ratifies an act by
 - (a) manifesting assent that the act shall affect the person's legal relations, or
 - (b) conduct that justifies a reasonable assumption that the person so consents.
- (3) Ratification does not occur unless
 - (a) the act is ratifiable as stated in § 4.03,
 - (b) the person ratifying has capacity as stated in § 4.04,
 - (c) the ratification is timely as stated in § 4.05, and
 - (d) the ratification encompasses the act in its entirety as stated in § 4.07.

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Comment d. Actions that constitute ratification. Ratification requires an objectively or externally observable indication that a person consents that another's prior act shall affect the person's legal relations. To constitute ratification, the consent need not be communicated to the third party or the agent. This is so because the focal point of ratification is an observable indication that the principal has exercised choice and has consented. In contrast, the principal's manifestation of assent to the agent is essential to the presence of actual authority, (see §§ 2.01 and 3.01) and the principal's manifestation to the third party is essential to the presence of apparent authority (see §§ 2.03 and 3.03).

Conduct demonstrates consent to becoming subject to the legal consequences of another's act in the two situations stated in subsection (2). First, a person may ratify an act by manifesting assent that the act affect the person's legal relations. Second, the person may ratify the act through conduct justifiable only on the assumption that the person consents to be bound by the act's legal consequences. For example, knowing acceptance of the benefit of a transaction ratifies the act of entering into the transaction. This is so even though the person also manifests dissent to becoming bound by the act's legal consequences. See Comment g for further discussion.

It is a question of fact whether conduct is sufficient to indicate consent. Conduct that can be otherwise explained may not effect ratification. For example, a principal's failure to terminate or reprimand an employee by itself is not likely to ratify the employee's unauthorized action because the employer may have varied reasons for failing to take action adverse to an employee. On the other hand, if the employer is aware of ongoing conduct encompassing numerous acts by the employee, failure to terminate may constitute ratification, as in some circumstances may the promotion or celebration of such an employee.